



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
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Christopher DeLacy, Esquire
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2099 Pennsylvania Ave., N.W., Ste. 100
Washington, DC 20006-6801

AUG 19 2009

RE: MUR 6054
Donald M. Caldwell

Dear Mr. DeLacy:

On August 26, 2008, the Federal Election Commission notified your client, Donald M. Caldwell, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on June 23, 2009, found that there is reason to believe Donald M. Caldwell knowingly and willfully violated 2 U.S.C. § 441f, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Your client may submit any factual or legal materials that he believes are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. ☐

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If your client is interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the

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General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Jack Gould, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: Donald M. Caldwell

MUR 6054

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington, Melanie Sloan, Carlo A. Bell, and David J. Padilla. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

Donald M. Caldwell is the General Manager for Venice Nissan Dodge ("VND"), an automobile dealership in which Representative Vernon G. Buchanan holds a financial interest. The complaint alleges that employees of VND were reimbursed with corporate funds for making contributions to Representative Buchanan's 2006 congressional campaign. The complaint also alleges that employees were coerced into making contributions to Representative Buchanan's campaign.

Attached to the complaint was a sworn affidavit from a former VND employee, Carlo A. Bell (finance director). Mr. Bell stated in his affidavit that his supervisor, Donald M. Caldwell, told him and two other VND employees, Jack Prater (sales manager) and Jason A. Martin (finance manager), that they "needed to contribute to the campaign of Vern Buchanan." Affidavit of Carlo A. Bell ("Bell Aff.") ¶¶ 2, 3. According to Mr. Bell, "Mr. Caldwell was holding cash in his hand at the time and said that the company would reimburse us for our contributions. He (Caldwell) explained that the company would give us \$1,000 in cash in exchange for our writing \$1,000 checks to the Campaign." *Id.* ¶ 3.

1 Mr. Bell stated that this did not seem right to him and he asked Mr. Caldwell if it was
2 legal. According to Mr. Bell, "Mr. Caldwell did not answer my question, instead asking me if I
3 was on the team or not." *Id.* ¶ 4. Mr. Bell stated that he was afraid he might lose his job if he
4 refused, so he replied that he was part of the team and agreed to write the check. *Id.* Mr. Bell
5 further stated that Mr. Caldwell then gave him, as well as Messrs. Prater and Martin, \$1,000 in
6 cash. *Id.* ¶ 5. Mr. Bell also stated that he later discovered that two other VND employees,
7 Marvin L. White (VND used car manager) and William F. Mullins (a VND salesman), also
8 received \$1,000 cash reimbursements when they agreed to write checks to the Buchanan
9 campaign. *Id.* ¶ 8. Messrs. Prater, Martin, White, and Mullins each wrote a check in the amount
10 of \$1,000 to Vern Buchanan for Congress ("VBFC") on September 16, 2005, and Mr. Bell wrote
11 his \$1,000 check to VBFC on September 17, 2005.¹

12 Donald M. Caldwell, in a sworn affidavit submitted in a supplemental response to the
13 complaint, dated February 11, 2009, admitted that he asked Carlo Bell, Jack Prater, and Jason
14 A. Martin to contribute to the Buchanan campaign, but denied that he coerced them into making
15 a contribution. Mr. Caldwell also denied reimbursing Messrs. Bell, Prater, or Martin for their
16 contributions to the Buchanan campaign.

17 The response to the complaint filed by Donald M. Caldwell and other parties ("Caldwell
18 Response"), dated October 17, 2008, contained identically-worded sworn affidavits by Jason
19 A. Martin, Jack Prater, Marvin L. White, and William F. Mullins, who are currently employed by
20 VND. *See* Caldwell Response, Exhibits A-D. Each employee stated that they "made the

¹ VBFC reported receiving \$1,000 contributions from Messrs. Bell, Prater, Martin, White, and Mullins on September 28, 2005.

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1 donation of my own free will and was not pressured, coerced or forced by anyone to make the
2 donation." Each employee further stated, "I was not reimbursed by anyone for making my
3 contribution to the campaign of Vern Buchanan."

4 A DVD of a televised news story was provided with the Caldwell Response as well. The
5 news story discussed the complaint in this matter and included a short video clip of an interview
6 with Carlo A. Bell that apparently aired during a prior broadcast. In that interview, hft. Bell
7 stated, "I was given \$1,000 in cash and told to write a check for \$1,000 to his campaign fund."
8 The news story also includes a short statement made by Mr. Martin, who is VND General
9 Manager Donald M. Caldwell's nephew. Mr. Martin, who Mr. Bell said was present at the
10 meeting where they were told they would be reimbursed for making a contribution to the
11 Buchanan campaign, stated that he "didn't feel like anyone was pressured and I specifically was
12 not pressured to do anything like that."

13 The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits the
14 making of contributions in the name of another person. 2 U.S.C. § 441f. The Commission's
15 regulations also prohibit a person from knowingly assisting another person in making a
16 contribution in the name of another. See 11 C.F.R. § 110.4(b)(1)(iii). Based on the available
17 information, it appears that Donald M. Caldwell may have reimbursed Messrs. Bell, Prater,
18 Martin, White, and Mullins, and thus violated 2 U.S.C. § 441f by making contributions in the
19 name of another and/or by knowingly assisting VND in making contributions in the names of
20 those VND employees. See 11 C.F.R. § 110.4(b)(1)(iii) (prohibiting a person from knowingly
21 assisting another person in making a contribution in the name of another).

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1 Given Mr. Caldwell's alleged role in the reimbursements and the allegations of coercion
2 (telling VND employees that they needed to make contributions to the Buchanan campaign,
3 providing cash to reimburse their contributions, and then asking Carlo Bell if he was on the team
4 or not when Mr. Bell questioned the legality of the reimbursement) raises the question of whether
5 Mr. Caldwell's violation may have been knowing and willful. The phrase "knowing and willful"
6 indicates that "acts were committed with full knowledge of all the relevant facts and a
7 recognition that the action is prohibited by law...." 122 Cong. Rec. H3778 (daily ed. May 3,
8 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97-98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982
9 (1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as
10 to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding on
11 the facts before it that this standard was not met); *National Right to Work Comm. v. FEC*, 716
12 F.2d 1401, 1403 (D.C. Cir. 1983) (same). An inference of knowing and willful conduct may be
13 drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v.*
14 *Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990) (defendants were active in deciding how to
15 reimburse employees with corporate funds for their contributions).

16 Therefore, there is reason to investigate whether Donald M. Caldwell knowingly and
17 willfully violated 2 U.S.C. § 441f by reimbursing Messrs. Bell, Martin, Mullins, Prater, and
18 White's \$1,000 contributions to VBFC.

19 **III. CONCLUSION**

20 Based on the foregoing, the Commission finds there is reason to believe that Donald M.
21 Caldwell knowingly and willfully violated 2 U.S.C. § 441f.

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